

INFO 350

The General Data Protection Regulation

INFO Policy, Law, and Ethics



Remember the story about Alexa recordings?

Consumer Tech • Perspective

Alexa has been eavesdropping on you this whole time

+

When Alexa runs your home, Amazon tracks you in more ways than you might want.



Most Read Business

- 1** Trump administration accuses Chinese officials of 'reneging' on commitments in trade talks
- 2** **Perspective**
Alexa has been eavesdropping on you this whole time
- 3** Mnuchin rejects Democrats' demand to hand over Trump's tax returns, all but ensuring legal battle

Remember the story about Alexa recordings?

- https://www.washingtonpost.com/technology/2019/05/06/alexa-has-been-eavesdropping-you-this-whole-time/?utm_term=.178d5e845787

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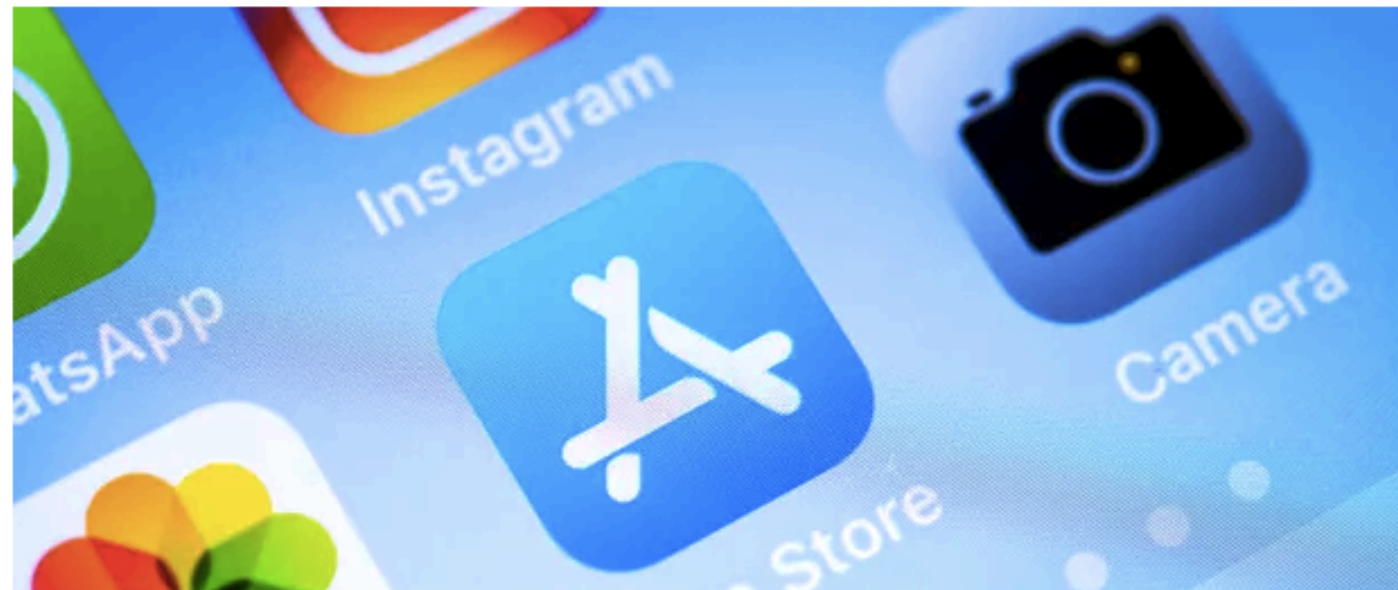
Apple

Apple braces for EU investigation after Spotify complaint

Streaming service accuses iPhone maker of abusing its dominance of its App Store

**Daniel Boffey in
Brussels**

Mon 6 May 2019
10.29 EDT



- “Spotify alleges that Apple, one of its fiercest rivals, is using the store to favor its own Apple Music service.
- Apple charges digital content providers such as Spotify a 30% fee for using its payment system for any subscriptions sold in its App Store.
 - (Presumably, Apple does not charge itself to promote its apps)
- Why is the EU suing?
 - Spotify is a Swedish company. One of the few successful tech firms in the EU.

Tech neutrality

- Technology is neutral. It is only how people use it that creates the political or power dynamics of technology

vs.

- Technology is not neutral. Technologies reflect the worldview and interests of its creators (or target audience).

Announcements

- Where are my peer reviews?
 - Look in the 'Critical Essay' assignment.
 - Peer reviews appear either as comments or as attachments
 - Let me know if you don't have any or can't find them
- Quiz on Thursday – second half of class
 - Privacy, free speech, some GDPR
 - Study guide to be posted today

General Data Protection Regulation

- Applies to the entire European Union (27 member states)
- Replaces an earlier privacy law – The Data Directive (1995)
- Big document! 173 recitals (“whereas...”) and 99 articles (the meat)
- GDPR applies to “data controllers” and “data processors” – businesses for the most part. **It does *not* apply to law enforcement or government**
 - Other regulations and directives exist for that – somewhat resembling US laws

Origins

- **European Convention on Human Rights** – provides a general right to privacy (reflection of WWII atrocities)
- **Droit D'Oubli** – “Right to Oblivion” a French law concerning the right to have criminal conviction data removed from public record after set amount of time
- **Warren & Brandeis (1890)** – *The Right to Privacy*
 - Defines privacy as “the right to be let alone”
- **Melvin v. Reid (1931)** – former prostitute wins right to have film about her life suppressed

The rights of data subjects

- Data subjects must consent to the processing of their personal data (Article 7)
 - “If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in **an intelligible and easily accessible form, using clear and plain language**. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding.”
- “Data subjects” must be able to **access, transfer, correct, or erase** their data at any time, as well as **withdraw consent** for its continued use (Articles 12-21)

Right to access one's own data

- Data subjects have the right to obtain confirmation from the data controller as to whether or not personal data concerning them is being processed, where and for what purpose.
- The controller shall provide a copy of the personal data, free of charge, in an electronic format.
- Seen as a dramatic shift to data transparency and empowerment of data subjects.

Automated Decisions

Article 11: Automated individual decision-making

- 1. Member States shall provide for a decision based solely on automated processing, including profiling, which produces an adverse legal effect concerning the data subject or significantly affects him or her, to be prohibited unless authorised by Union or Member State law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller.
- 2. Decisions referred to in paragraph 1 of this Article shall not be based on special categories of personal data referred to in Article 10, unless suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.
- 3. Profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 10 shall be prohibited, in accordance with Union law.

Who is obligated

- Responsibilities assigned for “data controllers” and “data processors”
 - Controllers – typically the owners of data who decide what is done with it
 - Processors – carry out processing on behalf of controllers (could be one in the same)
 - Example of a processor: cloud computing services, marketing firms working with a client’s database of contacts, other data and information contractors

Territorial scope

- The GDPR applies not only to companies based in the EU, but companies processing the personal data of EU residents, regardless of where the company is located.
 - Doesn't apply to US residents, but applies to US *companies* doing business with EU residents
- Huge impact on Facebook, Google, Amazon, Microsoft, etc.
- Some companies have basically applied GDPR to all users. Others offer distinct sites and services for EU users (e.g. Google, Facebook)

Privacy by design – aka “PbD”

- Privacy by design calls for the inclusion of data protection from the onset of the designing of systems, rather than an addition.
- ‘The controller shall... implement appropriate technical and organisational measures... in an effective way... in order to meet the requirements of this Regulation and protect the rights of data subjects’.
- Article 23 calls for controllers to hold and process only the data absolutely necessary for the completion of its duties (**data minimization**), as well as limiting the access to personal data to those needing to act out the processing.

Penalties for violation

- Fines up to 4% of annual global turnover or €20 Million (whichever is greater).
- That's a lot.
 - Most fines in the US (and previously in EU) have been much *much* lower
 - However, Facebook just fined \$5 billion by FTC, approx. 8% of its proceeds
- There is a tiered approach to fines e.g. a company can be fined 2% for not having their records in order (article 28), not notifying the supervising authority and data subject about a breach or not conducting impact assessment.

Forgetting



GDPR Right to Erasure

Article 17

Right to erasure ('right to be forgotten')

- The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:
 - a. the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
 - b. data subject withdraws consent
 - c. data subject objects to the processing
 - d. Unlawfully processed.

The Right to be Forgotten

- This “right” was named prior to the General Data Protection Regulation
- Emerged from an interpretation of the precursor – the Data Directive (1995)

The Right to Be Forgotten *case*

Google Spain SL, Google, Inc. v. Agencia Española de Protección de Datos, Mario Costeja González (aka “Costeja”)

- Costeja-González sued Google and a Spanish newspaper in 2009 for a 1998 story
 - Won part of the case, lost part of the case
- Court obligated Google to “delink” search results
- Did not require the publisher to remove information



Implications of “Costeja”

- Search engines bear the brunt of responsibilities for Right to Be Forgotten
 - Why search engines?
- Proponents see this as a “win” for privacy
 - Privacy as “control” over information
- Arguably contributes to “flourishing” - enables people to move on, escape mistakes of their pasts
- Critics worry about freedom of expression, loss of history, journalistic freedom, etc.
- **Interesting tension between conflicting rights and values: i.e. speech vs. individual well-being**

Implications and Controversies

- Critics worry about freedom of expression, loss of history, journalistic freedom...
 - [BBC](#) posts a list of articles that have been delisted from search



Values in Conflict

Rewriting History



Nikolai Ivanovich Yezhov was a Soviet secret police official under Joseph Stalin. He was head of the NKVD from 1936 to 1938, during the most active period of the Great Purge. After presiding over executions and mass arrests during the Great Purge, Yezhov became a victim of it himself. He was arrested, confessed under torture to a range of anti-Soviet activity, and was executed in 1940. **By the beginning of World War II, his status within the Soviet Union became that of a political unperson.** (Wikipedia)

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07.47 EST

Dutch surgeon wins landmark 'right to be forgotten' case

Ruling will ensure doctors no longer judged by Google on fitness to practise, lawyer says



“in what is said to be the first right to be forgotten case involving medical negligence by a doctor, the district court of Amsterdam subsequently ruled the surgeon had “an interest in not indicating that every time someone enters their full name in Google’s search engine, (almost) immediately the mention of her name appears on the ‘blacklist of doctors’, and this importance adds more weight than the public’s interest in finding this information in this way”.

The judge said that while the information on the website with reference to the failings of the doctor in 2014 was correct, the pejorative name of the blacklist site suggested she was unfit to treat people, and that was not supported by the disciplinary panel’s findings.

Who deserves to benefit from a 'right to be forgotten?'



W

Who does *does not* deserve to benefit from a 'right to be forgotten?'

Who ought to benefit from the right to be forgotten?

- People who committed crimes and have served their time and stayed out of trouble for some amount of time
- People who have experienced periods of addiction and dysfunction but are now doing fine
- People who have had major financial problems but are now doing fine
- People who committed crimes or were infamous for any reason as children

Who ought not?

- Elected officials – while in office
- People in upper management who employ more than ____ people (500? 5,000?)
- Police officers and others tasked with committing violence
- Tucker Carlson

GDPR and the Right to Be Forgotten

- The GDPR is a powerful framework that is sparking dialog all over the world
- Applies to non-governmental entities – i.e. businesses, which are mostly unregulated in the US
- Sets up tensions between US and EU law
- Right to Be Forgotten –
 - Highlights tensions between privacy and other values – including journalism, accountability, security, and so on.

In Lecture Reflection – May 7th

- Could/should a law like the GDPR become law in the United States?
 - Why or why not?
 - Is there anything special about US law or US culture that makes this possibility more or less likely?
 - Would you prefer that there was a GDPR-like law in the US?